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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of a democratic and equitable international order

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the sixth report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, submitted in accordance with Assembly resolution 71/190.

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Report of the Independent Expert on the promotion of a democratic and equitable international order*

Summary

The present report examines the impact of the conditionality of loans from the International Monetary Fund on development and human rights. With reference to his sixth report to the Human Rights Council, which focused on the World Bank (A/HRC/36/40), the Independent Expert on the promotion of a democratic and equitable international order calls upon the Fund to give States adequate policy space to fulfil their human rights obligations. Instead of imposing loan conditions that weaken the public sector and induce reductions in social spending, States should be encouraged to reduce military expenditure, cooperate in efforts to prevent tax evasion, corruption and profit-shifting and reach a global consensus on sovereign debt restructuring.

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* The Independent Expert would like to express his appreciation to the committed, hardworking and competent secretariat of the Office of the United Nations High Commissioner for Human Rights and encourages the General Assembly to allocate considerably greater resources to the Office, the special procedures of the Human Rights Council, the treaty bodies and the United Nations Conference on Trade and Development.

I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 71/190, in which the Assembly invited the Independent Expert on the promotion of a democratic and equitable international order to continue his research into the impact of financial and economic policies pursued by international organizations and other institutions on a democratic and equitable international order, in particular by the World Bank and the International Monetary Fund.

2. In the same spirit, in its resolution 71/236, entitled "Towards a New International Economic Order", the General Assembly reaffirmed that national development efforts need to be supported by an enabling international economic environment, including coherent and mutually supporting world trade, monetary and financial systems and strengthened and enhanced global economic governance, as well as by respect for each country's policy space, which set the stage for the present report.

3. The Independent Expert devoted his most recent report to the Human Rights Council (A/HRC/36/40) to an analysis of the human rights impacts of World Bank policies, as well as to redress mechanisms, including the Inspection Panel and the Compliance Advisor/Ombudsman. The present report focuses on the International Monetary Fund (IMF) and, in particular, on the "conditionality" of IMF loans. The reader will recognize the pertinence of the Independent Expert's report on the World Bank, but should bear in mind the differences between the two institutions, which each have their own Articles of Agreement[1] and specific mandates, in particular that, while the World Bank finances projects, IMF lends to Governments.

4. The present report is focused on the impacts of IMF policies on the international order and human rights. It does not contain macroeconomic analyses or forecasts, but explorations of possible solutions to endemic problems that impede the enjoyment of human rights by the millions of human beings affected by the economic and financial decisions of Governments, international organizations, transnational corporations and banks.

5. There is no doubt that the World Bank and IMF have played major roles in today's international order. Both institutions have the potential to significantly contribute to the realization of the Sustainable Development Goals and should draw inspiration from Goal 16, which aims at promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels (see General Assembly resolution 70/1; and A/69/700). The draft declaration on the right of peoples and individuals to international solidarity, a promising *de lege ferenda* instrument, should also be a source of encouragement for IMF to ensure that no one is left behind (see A/HRC/35/35).

6. In response to the questionnaire sent by the Independent Expert, IMF clarified that it had "a limited, technical mandate to promote freer international economic exchange and facilitate balance of payments adjustment by member countries".[2] However, even if IMF is not a "development institution" as such, nothing would prevent it from advancing inclusive economic development and human rights. In that regard, in its response, IMF acknowledged the following:

> IMF staff recognize the importance of respect for human rights and, in the discharge of its mandate under its Articles of Agreement, IMF contributes to the preconditions for the achievement of human rights. IMF activities

[1] Available from www.imf.org/external/pubs/ft/aa/; and http://go.worldbank.org/Q53G3UP520.

[2] See also International Monetary Fund, *Articles of Agreement* (Washington, D.C., 2016), article I.

indirectly promote human rights (in particular, social and economic rights) by helping to create an economic and institutional environment in which human rights can flourish.

7. According to its response, IMF exercises its monitoring and financing competences to promote a stable economic and financial environment, which in turn facilitates the exercise of human rights in member States. As early as in the *World Economic and Social Survey 2000*, that optimistic projection had been called into question. In a retrospective contained in the *World Economic and Social Survey 2017*, the conventional thinking called into question in the *Survey* was summarized as follows: "According to the logic of the [Washington] Consensus, stabilization, liberalization and privatization would automatically stimulate economic growth whose trickle-down effects should improve living standards."[3] In contrast, in the *Survey*, factors that fostered the persistence of poverty traps, including weak aggregate demand and institutional constraints, such as the prevalence of highly unequal asset holdings (especially landholdings) were identified. The profession of faith in the "trickle-down" effect dies hard and reminds us of the work of Ayn Rand in *The Virtue of Selfishness*.[4]

8. The Independent Expert is of the view that, in the discharge of its functions, IMF should ensure that its lending practices, and in particular the "conditionality"[5] thereof, do no harm to developed or developing economies and do not conflict with established human rights norms, such as by imposing privatization of government services, deregulation of markets or "austerity" measures that, as empirical evidence has shown in many cases, have led to widespread unemployment and misery. The Independent Expert does not suggest that IMF staff is indifferent to human rights, rather he sees a need for IMF to anticipate the consequences of the "conditionality" of its lending practices and to integrate ex ante human rights assessments so that its activities do not lead to violations of human rights. Moreover, there must be an effective mechanism in place to monitor the impacts of IMF activities and to apply prompt corrective measures as needed.

9. In its *Spotlight on Sustainable Development 2017* report submitted to the 2017 session of the high-level political forum on sustainable development, the Civil Society Reflection Group on the 2030 Agenda for Sustainable Development assessed how privatization and corporate capture were hijacking the 2030 Agenda for Sustainable Development. It observed that, while Governments committed in 2015 to a revitalized global partnership and declared that public finance had to play

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[3] *World Economic and Social Survey 2017: Reflecting on Seventy Years of Development Policy Analysis* (United Nations publication, Sales No. E.17.II.C.1). Available from www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESS_2017-FullReport.pdf.

[4] Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New American Library, 1961); See also Naomi Klein, "Thanks a million, Ayn Rand, for setting the greedy free", The Guardian (28 September 2007). The author describes how Alan Greenspan discovered Ayn Rand in 1974. "What she did … was to make me think why capitalism is not only efficient and practical, but also moral". Klein comments "Rand's ideas about the 'utopia of greed' … infused [Greenspan] with a powerful new sense of mission: making money wasn't just good for him, it was good for society as a whole". Available from www.theguardian.com/commentisfree/2007/sep/29/comment.comment.

[5] International Monetary Fund, IMF Conditionality, 17 April 2017. Available from www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality; Anna Yukhananov, "IMF loan conditions grow despite vows to limit them: study", Reuters, 2 April 2017. Available from www.reuters.com/article/us-imf-conditions-idUSBREA311SZ20140402; ActionAid Ghana, "Implications of IMF loans and conditionalities on the poor and vulnerable in Ghana", November 2010. Available from www.actionaid.org/sites/files/actionaid/implications_of_imf_loans_and_conditionalities_on_the_poor_and_vulnerable_in_ghana.pdf; Eurodad, "World Bank and IMF conditionaltiy: a development injustice", June 2006. www.eurodad.org/uploadedfiles/whats_new/reports/eurodad_world_bank_and_imf_conditionality_report.pdf.

a vital role in achieving the Sustainable Development Goals, "the combination of neoliberal ideology, corporate lobbying, business-friendly fiscal policies, tax avoidance and tax evasion ha[d] led to the massive weakening of the public sector and its ability to provide essential goods and services".[6]

10. In the report, the shared responsibility of the international financial institutions in the weakening of the State through the imposition of structural adjustment programmes, in particular in highly indebted countries of the global South, is noted.[7]

11. Several special rapporteurs, independent experts and working groups have already addressed the issues referred to in resolutions 71/190 and 71/236 (see A/67/302, A/69/297, A/71/302, A/HRC/7/11/Add.2, A/HRC/26/28, A/HRC/29/31 and A/HRC/34/51),[8] and the Independent Expert endorses their findings and recommendations. The impact of IMF on the international order, and in particular on the enjoyment of civil, cultural, economic, political and social rights, has also been the subject of studies by lawyers, economists and civil society organizations. The object of the present report is not to pretend to do better than Naomi Klein in her seminal book *The Shock Doctrine*,[9] or surpass professors Joseph Stiglitz,[10] Thomas Piketty,[11] Jeffrey Sachs,[12] Paul Krugman,[13] Dani Rodrik,[14] William van

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[6] Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, *Spotlight on Sustainable Development 2017: Reclaiming Policies for the Public* (2017). Available from www.2030spotlight.org/en.

[7] Ibid., p. 12.

[8] See also the Reports of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, available www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx.

[9] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008).

[10] See www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

[11] Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, Massachusetts and London, England, Belknap Press of Harvard University Press, 2014); see also Thomas Piketty, "The IMF, the inequality debate, and economic research", 21 September 2016. Available from http://piketty.blog.lemonde.fr/2016/09/21/the-imf-the-inequality-debate-and-economic-research/; and Carlos Góes, "IMF working paper: testing Piketty's hypothesis on the drivers of income inequality: evidence from panel VARs with heterogeneous dynamics", working paper No. WP/16/160 (International Monetary Fund, 2016). Available from www.imf.org/external/pubs/ft/wp/2016/wp16160.pdf.

[12] Jeffrey Sachs, "Fixing the IMF and the World Bank", 4 October 1999. Available from www.project-syndicate.org/commentary/fixing-the-imf-and-the-world-bank?barrier=accessreg; Jeffrey Sachs, "A project in every port", *Finance and Development*, vol. 49, No. 4 (December 2012). Available from www.imf.org/external/pubs/ft/fandd/2012/12/people.htm; Jeffrey Sachs, "A warning on the eve of the G-20 summit", *Boston Globe*, 5 July 2017. Available from www.bostonglobe.com/opinion/2017/07/05/warning-eve-summit/TL2az8LWtbMYkNGklqjhPP/story.html.

[13] Paul Krugman, "Leave zombies be", *Finance and Development*, vol. 53, No. 4 (December 2016). Available from www.imf.org/external/pubs/ft/fandd/2016/12/krugman.htm; Paul Krugman, "The conscience of a liberal: opinion pages", *New York Times*. Available from https://krugman.blogs.nytimes.com/page/2/; Paul Krugman, "The case for cuts was a lie. Why does Britain still believe it? The austerity delusion", *The Guardian*, 29 April 2015. Available from www.theguardian.com/business/ng-interactive/2015/apr/29/the-austerity-delusion.

[14] Dani Rodrik, "The G20's misguided globalism", 6 July 2017. Available from www.project-syndicate.org/print/g20-misguided-globalism-by-dani-rodrik-2017-07; Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York and London, W.W. Norton and Company, 2011), and Dani Rodrik, *Economics Rules: The Rights and Wrongs of the Dismal Science* (W.W. Norton and Company, New York and London, 2015).

Genugten,[15] Graham Bird and Dane Rowlands.[16] The present report contains a consideration of the current situation, with a view to formulating pragmatic recommendations and aligning the Bretton Woods institutions with the international human rights treaty regime, which applies not only to States, but to intergovernmental organizations and transnational corporations (see E/C.12/2016/1).[17] In the modern, globalized world, no one can opt out of what may be referred to as the customary international law of human rights.

12. There is no shortage of opinions about the impact of the World Bank and IMF on the international order. Some observers think that the Bretton Woods institutions have greater impact on world affairs than all the resolutions of the General Assembly, the Economic and Social Council and the United Nations Conference on Trade and Development (UNCTAD) combined. Whereas, in principle, the Charter of the United Nations should prevail over all other treaties and international agreements (Article 103), the fact is that those institutions are not formally subordinated to the United Nations.[18]

13. Although IMF is a "specialized agency" under the terms of the Charter of the United Nations, the Agreement Between the United Nations and the International Monetary Fund, adopted in 1947, stipulates that "the Fund is, and is required to function as, an independent international organization". In its responses, IMF noted that "decisions by, inter alia, the General Assembly are not binding on IMF". Moreover, IMF indicated that: "As an institution concerned with economic issues, IMF is precluded from using its powers to support particular political systems or to directly engage in the promotion of human rights." That, however, cannot mean that there is no accountability or that IMF is absolved of responsibility for the adverse human rights impacts of its lending practices.

II. Challenges

A. Ideological obstacles

14. Notwithstanding the existence of excellent empirical studies, accurate diagnoses and innovative reform proposals, a regrettable level of inertia prevails in IMF management. In *The Shock Doctrine*, Naomi Klein focuses on the fundamental problem: economic shock therapy and crisis opportunism. She describes how the doctrine "privatize or die" has been imposed on crisis-racked countries, noting that in the 1990s "the [United States] Treasury and the IMF became much tougher in their demands for instant privatizations".[19] She describes the "Tequila Crisis" in Mexico and the "Wild West" privatizations in the Argentina of Menem and the Bolivia of Goni and the Russian Federation of Yeltsin, which had devastating human rights consequences.

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[15] Willem van Genugten, *The World Bank Group, the IMF and Human Rights: A Contextualised Way Forward* (Cambridge, United Kingdom, Intersentia, 2015).

[16] Graham Bird and Dane Rowlands, *The International Monetary Fund: Distinguishing Reality from Rhetoric* (Cheltenham, United Kingdom and Northampton, Massachusetts, Edward Elgar Publishing, 2016).

[17] See also Committee on Economic, Social and Cultural Rights, general comment No. 12 on the right to adequate food; and Committee on Economic, Social and Cultural Rights general comment No. 14 on the right to the highest attainable standard of health.

[18] See William Holder, "The relationship between the International Monetary Fund and the United Nations", in *Current Legal Issues Affecting Central Banks*, vol. 4, Robert Effros, ed. (Washington, D.C., International Monetary Fund, 1997).

[19] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008); see also John Perkins, *Confessions of an Economic Hitman* (New York, Plume, 2006).

15. Some IMF insiders resisted this trend. For example, senior IMF economist Davison Budhoo memorably resigned, after accusing the Fund of using "statistical malpractice" in order to exaggerate the level of economic crisis in countries, following which IMF would propose its own solutions.[20] In Trinidad and Tobago, for example, the oil-rich country was made to look far less stable than it actually was. In another instance, Davison Budhoo contended that the Fund "invented, literally out of the blue", huge unpaid government debts. These "gross irregularities", which he claimed were deliberate and not mere "sloppy calculations", were taken as fact by the financial markets, which promptly classified Trinidad and Tobago as a bad risk and cut off financing.

16. This mismanagement in the Caribbean had its counterpart in Asia during the 1990s Asian financial crisis. Naomi Klein comments: "As far as the IMF was concerned, the crisis was going extremely well. In less than a year, it had negotiated the economic equivalent of extreme makeovers for Thailand, Indonesia, South Korea and the Philippines ... The IMF 'help' had turned crisis into catastrophe."[21] Even the IMF Independent Evaluation Office concluded that the structural adjustment demands imposed on Asian countries were "ill-advised", warning that "crisis should not be used as an opportunity to seek a long agenda of reforms just because leverage is high".[22] In their book on the subject, Graham Bird and Dane Rowlands noted that "critics also argued that the design of programs in East Asia was inappropriate, involving excessive conditionality and much more emphasis on compressing domestic demand through fiscal austerity".[23] Sakib Sherani, a Pakistani economist, explained in an article entitled "A better multilateralism" that both the World Bank and IMF had often acted:

> in concert with [United States] foreign policy — in effect, as a veritable instrument or extension of [United States] policy objectives. Evidence for this charge comes from two eminent sources: the Meltzer Commission report of 2000, commissioned by the [United States] Congress, and the IMF Independent Evaluation Office's first report released in 2001 (which found Pakistan's programmes to be "geopolitical" in nature).[24]

17. Prioritizing "growth" above all other considerations, including human rights and the environment, *The Managing Director's Global Policy Agenda: a more inclusive and resilient global economy*, a policy paper issued for the World Bank-IMF meeting in April 2017, manifests the continued commitment to neoliberal economic approaches. It does acknowledge, however, that inequality poses a problem:

> Staff will study how fiscal policies — including the progressivity of taxation, the design of social safety nets, and a basic income grant — could help address inequality and other side effects of economic integration and technology. Staff

[20] Davison Budhoo, *Enough is Enough: Dear Mr. Camdessus ... Open Letter of Resignation to the Managing Director of the International Monetary Fund* (New York, New Horizons Press, 1990), p. 102; and Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008), p. 10.

[21] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008).

[22] Independent Evaluation Office of the International Monetary Fund, *The IMF and Recent Capital Account Crises: Indonesia, Korea, Brazil — Evaluation Report* (Washington, D.C., International Monetary Fund, 2003), p. 43. See also Allan Meltzer, "The report of the International Financial Institution Advisory Commission: comments on the critics", report prepared for Carnegie Mellon University Research Showcase, 2000. Available from https://pdfs.semanticscholar.org/6ac0/b262dd0bac92b27acf3aa3dd88ee1e5c6b35.pdf.

[23] Bird and Rowlands, *The International Monetary Fund*, p. 3.

[24] Sakib Sherani, "A better multilateralism", *Dawn*, 14 October 2016. Available from www.dawn.com/news/1289815.

> will also further explore the impact of structural reforms and financial sector policies on growth, income, jobs, and inequality.[25]

18. In fact, IMF advocacy of structural adjustment has privileged powerful corporate interests and created a vicious cycle of dependence for borrower countries. As noted by Peter Dolack:

> Ideology plays a critical role here. International lending organizations ... consistently impose austerity. The IMF's loans, earmarked ... to pay debts or stabilize currencies, always come with the same requirements to privatize public assets (which can be sold far below market value to multi-national corporations waiting to pounce); cut social safety nets; drastically reduce the scope of government services; eliminate regulations; and open economies wide to multi-national capital, even if that means the destruction of local industry and agriculture. This results in more debt, which then gives multi-national corporations and the IMF, which enforces those corporate interests, still more leverage to impose more control, including heightened ability to weaken environmental and labour laws.[26]

19. In his book *Capital in the Twenty-First Century*, Thomas Piketty observes that economic research is not designed to produce ready-made certainties, because there is no universal law of economics. Thus, while the ongoing debate among economists remains important, more crucial for the world is the effects that those theories and ideologies have on the ground, on the lives of real people.

20. Improving people's lives would require IMF to abandon obsolete economic models and take a human rights-based approach. Indeed, the Independent Expert is of the view that a change, away from the Washington consensus of privatization, deregulation and "austerity measures" to a more "progressive" philosophy of inclusive development, is essential.

21. In response to the Independent Expert's questionnaire, Human Rights Watch noted that international financial institutions continued to argue that they had a "non-political" mandate, implying that "human rights" was a "political" issue they need not address. That mindset must be changed and the self-serving argument that international financial institutions are bound only by their own internal standards must go.

22. In that regard, Rutgers professor Radhika Balakrishnan and James Heintz set out the following explanation:

> In setting the conditions attached to loans to the poorest countries, the IMF has ignored the implications its policies have for governments' ability to meet their human rights obligations. Instead, the IMF narrows its focus to stable growth and lower inflation. Adding human rights into the mix involves more than an additional chapter tacked onto a Poverty Reduction Strategy. It requires a fundamental change in how the IMF supports development. Human rights obligations represent the constraints under which macroeconomic policies must operate, not the other way around.[27]

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[25] International Monetary Fund, "The managing director's global policy agenda: a more inclusive and resilient global economy", 2017, p. 5. Available from www.imf.org/en/Publications/Policy-Papers/Issues/2017/04/18/md-spring-global-policy-agenda-a-more-inclusive-and-resilient-global-economy.

[26] Pete Dolack, "World Bank declares itself above the law", 24 March 2017. Available from www.counterpunch.org/2017/03/24/world-bank-declares-itself-above-the-law.

[27] Radhika Balakrishnan and James Heintz, "Making the International Monetary Fund accountable to human rights". Available from www.huffingtonpost.com/radhika-balakrishnan/making-the-international_b_549976.html (accessed 27 July 2017).

B. Rhetoric and reality

23. Recently, IMF has made a considerable effort at improving its image through the issuance of factsheets, discussion notes and public statements in order to demonstrate that it has taken on board the many criticisms of its practices. Yet one must still question whether the organization has really reformed itself and whether it is now protecting social spending and prioritizing health and education. In practice, as Alexander Kentikelenis, Thomas Stubbs and Lawrence King noted, "IMF has not lived up to its own hype on social protection".[28] Whereas a growing number of IMF loans do include social spending targets, experience shows that such targets have not been met — and cannot be met. The scholars elaborated as follows:

> Stringent IMF-mandated austerity measures explain part of this trend. As countries engaged in excessive fiscal belt-tightening to meet the IMF's macroeconomic targets, few funds were left for maintaining social spending ... Under direct IMF tutelage, some of the poorest countries underfunded their social protection systems ... The organization still promotes targeted social assistance policies, at a time when global debates around the [Sustainable Development Goals] are overwhelmingly focused on the universal provision of key services ... the IMF can help by aiding low-income countries in setting solid fiscal foundations for the development of social policies. This will entail abandoning pretences of reform in IMF-supported programmes, and overcoming institutional inertia.[29]

C. Selective conditionality

24. The IMF factsheet on conditionality indicates the following:

> When a country borrows from the IMF, its Government agrees to adjust its economic policies to overcome the problems that led it to seek financial aid from the international community. These loan conditions also serve to ensure that the country will be able to repay the Fund so that the resources can be made available to other members in need. Lending reforms approved in 2009 streamlined IMF conditionality in order to promote national ownership of strong and effective policies.[30]

25. Guidelines on conditionality were revised in 2002 and 2009.[31] In addition, revised operational guidance was given to staff, in 2014, and issued as a policy paper, with the changes thereto primarily focused on conditionality in relation to "macrosocial" (or jobs and growth) issues, the better leveraging of surveillance,

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[28] Alexander Kentikelenis, Thomas Stubbs and Lawrence King, "The IMF has not lived up to its own hype on social protection", *The Guardian*, 25 May 2016. Available from www.theguardian.com/global-development/2016/may/25/the-imf-international-monetary-fund-has-not-lived-up-to-hype-on-social-protection.

[29] Alexander Kentikelenis, Thomas Stubbs and Lawrence King, "IMF conditionality and development policy space, 1985-2014", *Review of International Political Economy*, vol. 23, No. 4 (24 May 2016). Available from www.kentikelenis.net/uploads/3/1/8/9/31894609/kentikelenis2016_imf_conditionality_and_development_policy_space.pdf.

[30] www.imf.org/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality?pdf=1.

[31] International Monetary Fund, "Guidelines on conditionality", paper prepared by the Legal and Policy Development and Review Departments, 25 September 2002. Available from www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.htm.

technical assistance in programme design, and improving partnerships with other institutions, in particular regional financing arrangements.[32]

26. Notwithstanding those reforms, the most obvious and common-sense loan condition should be a moratorium on military expenditure[33] for the duration of the loan. IMF has so far resisted that proposal, maintaining the following anachronistic position:

> Fund policy prohibits the establishment of conditions that would require members to reduce the level of military spending. While the amount which the authorities of a member spend on the military may be very important for the country's macroeconomic position, the Fund has taken the position that the question of military spending is so inherently political in nature that it could not be appropriately made the subject of conditionality.[34]

27. That policy is not mandated by its Articles of Agreement, however, and, even if it were, the articles are subject to amendment.

28. In addition to the selective exclusion of loan conditions relating to military expenditure, the European Network on Debt and Development (Eurodad),[35] a non-governmental organization working on issues relating to debt, development finance and poverty reduction, presents the argument that IMF conditionality constitutes an impediment to development policies and democratically defined sustainable development strategies. In the view of Eurodad, appropriate financing would empower peoples to chart their own paths towards development and ending poverty.

29. Scholars Radhika Balakrishnan and James Heintz have pointed out that the Group of 20, a group of States with hard-law human rights obligations, has bailed out IMF using taxpayer money without applying a condition that IMF policies support human rights enhancement.[36] In the context of conditions these human rights obligations must now be brought on board as quid pro quo. "In exchange for the G-20's financial support, the IMF must be held accountable for advancing human rights for all."[37]

30. To the extent that IMF maintains its focus on imposing strict limits on government spending, it must be clearly defined what kind of government spending is toxic and what is not. Under no conditions should government spending for health and education be reduced. However, military procurement and research and development spending should be paused for the duration of IMF loans. Where security concerns exist, the United Nations and regional arrangements should provide what is known as "collective security".

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[32] International Monetary Fund, "Revised operational guidance to IMF staff on the 2002 conditionality guidelines", 2014. Available from www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Revised-Operational-Guidance-to-IMF-Staff-on-the-2002-Conditionality-Guidelines-PP4889.

[33] Stockholm International Peace Research Institute, SIPRI military expenditure database. Available from https://sipri.org/databases/milex.

[34] Ross Leckow, "Conditionality in the International Monetary Fund", 7 May 2002. Available from www.imf.org/external/np/leg/sem/2002/cdmfl/eng/leckow.pdf;and Susan Jackson, "Military spending and the Washington consensus: the unrecognized link between militarization and the global political economy", PhD dissertation, University of Arizona, 2008. Available from http://arizona.openrepository.com/arizona/bitstream/10150/193513/1/azu_etd_2867_sip1_m.pdf.

[35] See www.eurodad.org/; and www.eurodad.org/Countdown-2017-UN-FfD-Forum.

[36] Radhika Balakrishnan and James Heintz, "Making the International Monetary Fund accountable to human rights". Available from www.huffingtonpost.com/radhika-balakrishnan/making-the-international_b_549976.html (accessed 27 July 2017).

[37] Ibid.

III. Countries in crisis

A. Greece

31. As the financial crisis in Greece demonstrates, IMF surveillance capacities are unequally applied, depending on the status of a member State's economy. Once an economic crisis hits, IMF may doggedly impose austerity measures as conditions, with variable consequences for rights realization in member States. Triggered by the Wall Street meltdown in 2008, the crisis in Greece dragged many weaker economies under, with disastrous consequences for economic, social and cultural rights. The IMF watchdog, its Independent Evaluation Office, determined that IMF operated in a "culture of complacency" prone to "superficial and mechanistic" analysis.[38] A series of calamitous misjudgements were made, and the warning signs of impending crisis were ignored. In the report of the Office, it was noted that its own investigators were unable to obtain key records or penetrate the activities of secretive ad hoc task forces.

32. The results of an evaluation by the Independent Evaluation Office of the performance of IMF in the run-up to the financial crisis pointed to inadequate surveillance in the euro area, which echoed a larger problem of IMF surveillance in advanced economies. Several factors were at play, including "a high degree of groupthink, intellectual capture, a general mindset that a major financial crisis in large advanced economies was unlikely, and incomplete analytical approaches".[39]

33. According to the Independent Evaluation Office, IMF violated its own cardinal rule by signing off on a bailout in 2010, even though it could offer no assurance that the package would bring the country's debts under control or clear the way for recovery. An exception was made because of the risk of "systemic contagion". Indeed, the concern being addressed was saving the monetary union, not helping Greece out of its predicament. In the report, it was also noted that:

> Some officials in Europe stated to the [Independent Evaluation Office] that, in their view, the troika-supported programs, including in Greece, were a success because they averted a breakdown of the euro area and a widely-feared exit of Greece from the single currency. Consistent with these views, the European Court of Auditors ... noted that the programs "addressed the need to safeguard the stability of the euro area or the [European Union] as a whole."[40]

34. Another critic, Stephen Lendman, described the series of disasters associated with the mismanagement of the Greek debt thus: "Even the Bretton Woods established/[United States] controlled loan shark of last resort IMF astonishingly called for Greek debt relief. It doesn't care about force-fed austerity harming ordinary people. It's concerned about contagion. If Greece implodes, expect continental fallout."[41]

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[38] Ambrose Evans-Pritchard, "IMF admits disastrous love affair with the euro and apologises for the immolation of Greece", *The Telegraph*, 29 July 2016. Available from http://eur.[illegible]st.co/imf-admits-disastrous-love-affair-with-euro-apologises-for-immolation-of-greece.

[39] Independent Evaluation Office of the International Monetary Fund, *The IMF and the Crises in Greece, Ireland, and Portugal* (Washington, D.C., International Monetary Fund, 2016), p. 37. Available from www.ieo-imf.org/ieo/files/completedevaluations/EAC%20-%20Full%20Report.pdf.

[40] Ibid., para. 80.

[41] Stephen Lendman, "IMF: Greek debt untenable", 15 July 2015. Available from www.globalresearch.ca/imf-greek-debt-untenable/5462570.

35. The Independent Evaluation Office, however, only acknowledged the failure of the bailout, without addressing the adverse human rights impacts of the conditions imposed.

36. At the end of his country visit to Greece in December 2015, the Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, issued a statement voicing concern about those very impacts, including the fact that an estimated 2.5 million people were without health insurance as a result of the crisis. He went on to detail that the rights to work and social security were in a state of disarray, that youth unemployment remained at 47.9 per cent and only 1 out of 10 registered unemployed persons received unemployment benefits, while millions were left without basic social security. "After five years of adjustment policies, indicators tracking economic, social and cultural rights in Greece have not improved."[42]

37. Part of the problem had been the loan "conditionality imposed by the troika consisting of IMF, the European Commission and the European Central Bank. Juan Pablo Bohoslavsky regretted that "such far-reaching reforms ... appear to be imposed by lenders with the sole goal of repayment, and the views of the Greek people are not seriously taken into consideration".[43] In the section of his report to the General Assembly on the mission (A/71/305, sect. II.B), he called for IMF to significantly broaden its definition of "sustainability" under its Debt Sustainability Framework and respect the need to provide fiscal space to guarantee and ensure core human rights obligations.

38. In the same report, Juan Pablo Bohoslavsky also focused on integrating human rights into debt policies to counter new debt vulnerabilities and endorsed a statement of the Committee on Economic, Social and Cultural Rights on "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2016/1). He recalled that "both borrowing States and lenders were required to carry out human rights impact assessments prior to the provision of loans concerned, in order to ensure that the conditionalities did not disproportionately affect economic, social and cultural rights, and did not lead to discrimination" (A/71/305).

39. In that connection, in its response to the questionnaire sent in the preparation of the present report, IMF indicated the following:

> [I]n IMF programme design, attention is focused on enhancing social spending, and this then informs the Debt Sustainability Framework assessment ... IMF separately performs extensive work with its members to boost fiscal space through technical assistance and capacity-building in revenue administration, tax policy and international tax issues.

40. With respect to the specific recommendations made by Juan Pablo Bohoslavsky in his report to the Human Rights Council (A/HRC/31/60/Add.2), IMF responded as follows:

> IMF has been at the forefront of efforts to secure debt relief for Greece and to avoid excessive fiscal adjustment. ... The Fund has called for additional fiscal measures ... because the Fund views the current Greek budget structure as unsustainable. There is a pressing need to reorient the budget to better support

[42] Office of the United Nations High Commissioner for Human Rights (OHCHR), "UN human rights expert calls for debt relief to boost inclusive growth in Greece", 8 December 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16844&LangID=E.

[43] Ibid.

> growth and social protection. IMF has called for reforms to ensure better coverage of the poorest populations, including the full implementation of the newly introduced guaranteed minimum income. IMF has also called for preserving labour market reforms introduced in 2011-12 to safeguard employment. ... Further debt relief is now being discussed between the Greek authorities and their Eurozone partners in the context of the ongoing [European Stability Mechanism] adjustment programme.

41. Notwithstanding the above responses, the Independent Expert agrees with many who consider that the troika is continuing to fail in the ongoing crisis in Greece, which can only be resolved by debt relief and international solidarity. Additional "austerity measures" will only lead to continuing human rights violations.[44] He agrees with the findings contained in the preliminary report of the Truth Committee on Public Debt, led by Eric Toussaint and including contributions from the former Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, which concluded that the Greek debt is an "odious debt" that should be repudiated.[45]

42. In that regard, in its statement to the thirtieth session of the Human Rights Council (A/HRC/30/NGO/18), Centre Europe-tiers monde criticized IMF for facilitating the looting of Greece through privatization and anti-social austerity measures and endorsed the preliminary report of the Truth Committee on Public Debt, also referred to as the Greek Debt Truth Commission, the Truth Commission or the Greek Public Debt Audit,[46] and noted:

> IMF, as an international organization is bound by any obligations incumbent on it under general rules of international law ... The IMF is required to refrain from steps that would undermine the possibility of a borrowing State complying with its own national and international human rights obligations, as stated in the United Nations Guiding principles on foreign debt and human rights: 'International financial organizations and private corporations have an obligation to respect international human rights. This implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights.' In addition, the IMF, as a specialized agency of the United Nations, is bound by the general aims and principles of the United Nations Charter, including respect for human rights and fundamental freedoms.[47]

43. The submission of Centre Europe-tiers monde continued as follows:

> Greece could legally take a unilateral act of repudiation. Such a decision is justified by peremptory considerations of justice and equity, but is also founded on sovereignty and self-determination. This is the case where there is an absence of good faith, based on article 26 of the Vienna Convention on the Law of Treaties. ... The bad faith of the creditors consisted in rendering Greece financially subservient and imposing measures affecting the fundamental rights of the Greek people, in violation of national, European and

[44] OHCHR, "UN human rights experts welcome Greek referendum and call for international solidarity", 30 June 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16170&.

[45] Truth Committee on Public Debt, preliminary report. Available from http://cadtm.org/IMG/pdf/Report.pdf.

[46] See www.auditamosgrecia.org/en/executive-summary-greek-debt-audit/; see also http://greekdebttruthcommission.org/.

[47] See www.cetim.ch/debt-and-austerity-measures-imposed-on-greece-violate-the-human-rights-of-the-greek-people-and-international-law/.

> international law. Bad faith was also evident in the ultimate goal of the creditors, which was not to help the Greek people but rather ... to transform private debt into public debt and thus save the big private banks.[48]

44. The Independent Expert endorses the conclusions of the audit that the Greek debt is odious and illegitimate and that:

> the increase in debt was not due to excessive public spending, which in fact remained lower than the public spending of other Eurozone countries, but rather due to the payment of extremely high rates of interest to creditors, excessive and unjustified military spending, loss of tax revenues due to illicit capital outflows, state recapitalization of private banks, and the international imbalances created via the flaws in the design of the Monetary Union itself.[49]

45. In a leaked IMF memo to the European Commission, it was estimated that Greece's debt would reach 200 per cent of GDP in two years without relief. In 1980, it was 22.6 per cent. In 2008, 127 per cent. In 2014, 177.1 per cent. Since the beginning of the financial crisis, the economy of Greece plunged by over 25 per cent. The IMF memo continues as follows: "Greece's debt can now only be made sustainable through debt relief measures that go far beyond what Europe has been willing to consider so far."

46. However, even these dire predictions have not stopped the imposition of system-shaking loan conditions, nor the devastating human rights consequences which result from them. In February 2017, the European Union and IMF decided to impose further "austerity measures" on Greece,[50] namely, to make a further €7 billion payment to its creditors by July or risk defaulting on its entire debt, which remains at a staggering €330 billion. Whatever tactical differences may exist regarding the means to impose austerity on Greece, there are no conflicts over carrying it out. Regarding the substance of the "deal", it was noted in a Reuters report that: "Officials said the lenders would ask Greece to take 1.8 billion euros worth of new measures until 2018 and another 1.8 billion after 2018, focused on broadening the tax base and on pension cutbacks."[51] The new cuts represent 2 per cent of GDP — in human terms, a further €3.6 billion in austerity or taking another €327 from every man, woman and child in the country.

47. Sadly, the most succinct common-sense summation of the crisis in Greece was given by former Minister of Finance of Greece Yanis Varoufakis in an interview with Al-Jazeera, in which he stated that Greece was and is being subjected to "fiscal water-boarding".[52]

48. As a safeguard to prevent the further erosion of human rights in the country, the Independent Expert encourages all creditor States and financial institutions to revisit the "conditionality" of their past and future loans to Greece. Instead of demanding privatization, deregulation and reduction of social services, IMF should consider applying a different set of conditions; no loan should be awarded to any

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[48] http://www.cetim.ch/debt-and-austerity-measures-imposed-on-greece-violate-the-human-rights-of-the-greek-people-and-international-law/.

[49] Truth Committee on Public Debt, "Executive summary: Greek public debt audit report", 17 June 2015. Available from www.auditamosgrecia.org/en/executive-summary-greek-debt-audit/.

[50] Robert Stevens, "EU and IMF demand more austerity measures from Greece", 13 February 2017. Available from www.globalresearch.ca/eu-and-imf-demand-more-austerity-measures-from-greece/5574554?utm_campaign=magnet&utm_source=article_page&utm_medium=related_articles.

[51] Jan Strupczewski, "Euro zone, IMF agree on a common stance on Greece: official", Reuters (10 February 2017). Available from www.reuters.com/article/us-eurozone-greece-stance-idUSKBN15P1IL.

[52] Available from www.yanisvaroufakis.eu/2017/02/20/greeces-fiscal-waterboarding-continues-on-al-jazeera/.

country that continues spending for military procurement. In line with the recommendations made by the Independent Expert in his report to the Human Rights Council in 2014 (A/HRC/27/51), for the duration of a crisis and until the loans are paid back, a moratorium should be called on all military expenditure, save that for pensions and personnel. This means that Greece, a bankrupt country, must not be required by NATO to devote scarce resources to military expenditure.[53] Such a recommendation is desperately needed, given the results of the IMF survey on Greece conducted in 2010, in which "a significant reduction in military expenditure during the period" was envisaged.[54]

B. Argentina

49. In 1977, in an open letter to the Argentine military junta,[55] Roberto Walsh, an Argentinian journalist, denounced the crimes of the regime, the disappearances, systematic torture and other gross violations of human rights. "These events, which stir the conscience of the civilized world, are not, however, the greatest suffering inflicted on the Argentinean people ... It is in the economic policy of this government where one discovers not only the explanation for the crimes, but a greater atrocity which punishes millions of human beings through planned misery."[56] He placed the responsibility squarely with the "austerity" measures dictated by IMF. Roberto Walsh was killed by police the following day.

50. The mismanagement of Argentine debt is not new. And, even if the blame is shared, IMF has earned no laurels. As early as 2004, the wrong options were chosen.[57] The then Minister of Finance of Argentina, Roberto Lavagna, characterized Fund surveillance efforts as "ideological assessments", which blurred the capacity of the Fund to conduct objective assessments of policy reform.[58]

51. Even the Independent Evaluation Office acknowledged that "IMF surveillance failed to highlight the growing vulnerabilities in the authorities' choice of policies

[53] Jon Stone, "NATO countries are not spending enough on defence, the alliance's chief says", Independent, 28 October 2016. Available from www.independent.co.uk/news/uk/politics/nato-jens-stoltenberg-military-spending-gdp-target-countries-not-enough-a7384236.html; and BBC News, "NATO defence spending target met, government insists", 14 February 2017. Available from www.bbc.com/news/uk-politics-38969697.

[54] International Monetary Fund, "IMF survey: Europe and IMF agree €110 billion financing plan with Greece", 2 May 2010. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/socar050210a

[55] Rodolfo Walsh, "Carta abierta de Rodolfo Walsh a la junta militar" (24 March 1977), *Veredas do Direito*, vol. 4, No. 8 (2007). Available from www.domhelder.edu.br/veredas_direito/pdf/26_160.pdf.

[56] Benjamin Dangl, "After empowering the 1 per cent and impoverishing millions, IMF admits neoliberalism a failure", 31 May 2016. Available from https://towardfreedom.com/archives/globalism/after-empowering-the-1-and-impoverishing-millions-imf-admits-neoliberalism-a-failure/.

[57] Edmund Conway, "IMF admits mistakes in Argentina crisis", *The Telegraph*, 30 July 2004. Available from www.telegraph.co.uk/finance/2891368/IMF-admits-mistakes-in-Argentina-crisis.html; and Paul Blustein, "IMF says its policies crippled Argentina: internal audit finds warnings were ignored", 30 July 2004. Available from www.globalpolicy.org/component/content/article/209/43078.html.

[58] "IMF's 'role put into question': Argentina crisis evaluation", Bretton Woods Project, 21 September 2004. Available from www.brettonwoodsproject.org/2004/09/art-65659/.

and the IMF erred by supporting inadequate policies too long".[59] Roberto Lavagna agreed with the report's authors that a more participative decision-making process was needed: "the practice by certain prominent shareholders of bypassing the board raises serious transparency concerns".[60] Its correct diagnoses aside, interestingly enough, the words "human rights" do not appear in the report of the Office, which is only concerned with economic and financial matters.

C. Tunisia

52. Observers have similarly warned that the extreme conditions imposed on Tunisia by IMF would reverse progress made in the country following the Jasmine Revolution. In March 2017, the International Trade Union Confederation warned that "IMF is pushing Tunisia to the brink of economic and political disaster with its refusal to release urgently needed funds at a time when the country most needs international support."[61] According to the Government of Tunisia, IMF suspended payments on its four-year, $2.8 billion loan "to pressure the Government into mass dismissals in the public sector, along with sales of government assets and possible cuts to pensions."[62] Among other conditions, IMF demanded that Tunisia sell stakes in three State-owned banks, in addition to abolishing 10,000 public sector jobs.[63]

53. The General Secretary of the International Trade Union Confederation contested those conditions, indicating that: "Ideological diktats like this from the IMF will throw thousands into poverty and destroy the progress that has been made and that Tunisians are determined to extend. A deepening economic crisis would lead to a resurgence of fundamentalism and increase the risk of terrorist attacks both in Tunisia and in nearby countries."

54. On 12 June 2017, the IMF Executive Board completed its first review of the economic programme of Tunisia, thereby enabling Tunisian authorities to draw an additional $314.4 million of IMF funds.[64] While Tunisia sought a waiver of some conditions, the Government did agree to privatizations, an increased value added tax and a scale-back of its public sector.[65] Participants at the meeting of the Group of 20 in Hamburg in July 2017 deplored the additional austerity measures forced on Tunisia by IMF. As early as 2015, the Bretton Woods Project had noted: "The more things change, the more they stay the same … Despite the IMF's promising rhetoric,

[59] Independent Evaluation Office of the International Monetary Fund, "IMF's Independent Evaluation Office announces release of report on the role of the IMF in Argentina", press release No. 04/02, 29 July 2004. Available from www.imf.org/External/NP/ieo/2004/pr/eng/pr0402.htm; and Independent Evaluation Office of the International Monetary Fund, *The IMF and Argentina* (Washington, D.C., International Monetary Fund, 2004). Available from www.imf.org/External/NP/ieo/2004/arg/eng/index.htm.

[60] "IMF's 'role put into question': Argentina crisis evaluation", Bretton Woods Project, 21 September 2004. Available from www.brettonwoodsproject.org/2004/09/art-65659/.

[61] International Trade Union Confederation, "IMF stranglehold pushing Tunisia to the brink", 1 March 2017. Available from www.ituc-csi.org/imf-stranglehold-pushing-tunisia.

[62] Ibid.

[63] Tarek Amara, "Tunisia to accelerate reforms as IMF freezes loan: minister", Reuters, 26 February 2017. Available from www.reuters.com/article/us-tunisia-economy-idUSKBN16508T.

[64] International Monetary Fund, "IMF executive board completes first review under the extended fund facility (EFF) arrangement with Tunisia", press release No. 17/217, 12 June 2017. Available from www.imf.org/en/News/Articles/2017/06/12/pr17217-imf-executive-board-completes-first-review-under-eff-arrangement-with-tunisia.

[65] International Monetary Fund, "Tunisia: first review under the extended fund facility, request for waivers of non-observance of performance criteria and rephasing of access", country report No. 17/203, July 2017. Available from www.imf.org/~/media/Files/Publications/CR/2017/cr17203.ashx.

IMF policies prescribed since 2011 bear an uncanny resemblance to the familiar pre-2011 policies."[66]

IV. Role of the International Monetary Fund in the international order

A. Health emergencies

55. In addition to their potential to weaken public sector infrastructure, IMF conditionality has been shown to threaten the right to health. Researchers have noted that, with Governments required to demonstrate rapid economic growth and fiscal constraint, long-term investments, such as those required to improve health care, are discouraged, which leaves countries with underresourced health sectors vulnerable to breakdowns and public health emergencies.

56. In a study entitled "The impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations", scholars in the fields of sociology and public health linked IMF conditionality with reduced expenditure on health by Governments and consequently with setbacks in efforts to achieve universal health coverage. The academics indicate the following:

> We identify three pathways linking IMF-mandated policies to decreases in government health spending in the region: macroeconomic targets that reduce fiscal space for investment in health, limits to wage bills and civil service employment ceilings that inhibit hiring and retention of health staff; and decentralisation measures that amplify budget execution challenges in the health sector.[67]

57. The authors of the study concluded that IMF should facilitate the process of achieving universal health coverage by allowing policy space for borrowing countries to invest in health and determine their health policies free from the influence of unduly restrictive conditions. "In doing so", they stated, "IMF can learn from and collaborate with its sister institution, the World Bank, that recently supported the goal of [universal health coverage]".[68]

58. Commentators have further drawn a connection between IMF conditionality, reduced health sector spending and the Ebola outbreak in West Africa.[69] As professor Alexander Kentikelenis explained in his article in *The Lancet Global Health*:

> Economic reform programmes by the IMF have required reductions in government spending, prioritisation of debt service, and bolstering of foreign

[66] "Infographic: IMF policy in the MENA region", Bretton Woods Project, 18 December 2015. Available from www.brettonwoodsproject.org/2015/12/infographic-imf-policy-in-the-mena-region/.

[67] Thomas Stubbs and others, "The impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations", *Social Science and Medicine*, vol. 174 (February 2017). Available from www.sciencedirect.com/science/article/pii/S0277953616306876.

[68] Ibid., pp. 225-226; and Sanjeev Gupta, "Can a causal link be drawn? A commentary on 'the impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations'", *Social Science and Medicine*, vol. 181 (May 2017). Available from www.sciencedirect.com/science/article/pii/S0277953617301685, pp. 199-201.

[69] Adia Benton and Kim Yi Dionne, "5 things you should read before saying the IMF is blameless in the 2014 Ebola outbreak", *Washington Post*, 5 January 2015. Available from www.washingtonpost.com/news/monkey-cage/wp/2015/01/05/5-things-you-should-read-before-saying-the-imf-is-blameless-in-the-2014-ebola-outbreak/.

> exchange reserves. Such policies have often been extremely strict, absorbing funds that could be directed to meeting pressing health challenges. Although the IMF has responded to concerns about its programmes by incorporating "poverty-reduction expenditures" to boost health spending, these conditions were often not met. Thus, in 2013, just before the outbreak, whereas all three [of the most affected] countries achieved the IMF's macroeconomic policy prescriptions, they failed to meet targets for social spending.[70]

59. Writing in the *Washington Post*, professors Adia Benton and Kim Yi Dionne concluded the following:

> IMF and organizations like it have played an important role in creating a political environment in which the [Ebola] epidemic could emerge and become the deadliest on record … we argue that to ignore the effects of foreign aid and financial policies on local politics and social conditions is to miss an important part of the story.[71]

60. Scholars have likewise drawn attention to the impact of IMF conditionality on efforts to combat AIDS in developing countries.[72]

61. In another study, entitled "Impact of International Monetary Fund programs on child health", researchers found that IMF austerity policies may reduce parents' ability to look after their children's health in poor and middle-income countries. Involving some 2.8 billion people residing in 67 poor and middle-income countries from 2000 to 2005, the study examined five factors having an impact on children's health, including water, malnutrition, shelter, sanitation, and access to health care.[73]

62. Bearing in mind that the denial of adequate health care can lead to much suffering and death, the issue of accountability is inescapable. Admittedly,

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[70] Alexander Kentikelenis and others, "The International Monetary Fund and the Ebola outbreak", *The Lancet Global Health*, vol. 3, No. 2 (February 2015). Available from www.thelancet.com/journals/langlo/article/PIIS2214-109X(14)70377-8/fulltext.

[71] Adia Benton and Kim Yi Dionne, "5 things you should read before saying the IMF is blameless in the 2014 Ebola outbreak", *Washington Post*, 5 January 2015.

[72] Adia Benton, *HIV Exceptionalism: Development through Disease in Sierra Leone* (University of Minnesota Press, 2015); and Rick Rowden, *The Deadly Ideas of Neoliberalism: How the IMF has Undermined Public Health and the Fight Against AIDS* (London, UK, and New York, NY, Zed Books, 2009). Rowden worked for development non-governmental organizations for nearly a decade and examines published research, official reports, conference declarations and parliamentary statements to document the failures of neoliberal reforms to improve health outcomes. In Part Three of the book Rowden "explains the ways in which … support for strengthening public health systems and health workforces is being blocked by the IMF's fiscal and monetary policies and their associated budget restrictions and wage bill ceilings."

[73] Adel Daoud and others, "Impact of International Monetary Fund programs on child health", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 114, No. 25 (20 June 2017). Available from www.pnas.org/content/early/2017/05/09/1617353114, abstract; see also Alexander Kentikelenis, "Structural adjustment and health: a conceptual framework and evidence on pathways", *Social Science and Medicine*, vol. 187 (August 2017). Available from www.sciencedirect.com/science/article/pii/S0277953617301107.

international organizations enjoy immunity from domestic legal action,[74] but that immunity is already being challenged in the United States of America, for example, by civil society groups like Earth Rights International.[75]

B. Corruption, tax evasion and fiscal transparency

63. In principle, IMF loans should ensure that the risk of corruption and tax fraud is avoided and that appropriate monitoring and follow-up is available. Although IMF, in its publications, has recognized the importance of fiscal transparency and combating corruption, in practice, those standards are not uniformly raised.

64. As detailed by Human Rights Watch in its response to the Independent Expert's questionnaire:

> [International financial institutions] generally recognize the importance of avoiding corruption and of fiscal transparency and accountability. In practice, however, [International financial institutions] are selective when they raise these standards ... The IMF's Manual on Fiscal Transparency, which provides guidance on the implementation of its Fiscal Transparency Code, recognizes that these standards should apply to military revenue and expenditure, but in practice the institution has not used its leverage to support progress in this area.[76]

65. As an example, IMF chose not to raise with the Government of Egypt the matter of a lack of transparency and accountability over its military budget, when agreeing to a $12 billion loan. In the IMF Manual on Fiscal Transparency, which provides guidance on the implementation of its fiscal transparency code, it is recognized that those standards should apply to military revenue and expenditure,

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[74] Kristen Boon, "Privileges and immunities of international organizations", 11 June 2013. Available from http://opiniojuris.org/2013/06/11/privileges-and-immunities-of-international-organizations/; Niels Blokker and Nico Schrijver, eds., *Immunity of International Organizations* (Brill, 2015); *Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations* (General Assembly resolution 179 (II)); https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&lang=en; and International Organizations Immunities Act, 1945 22 USC § 288d(b); see also Steven Herz, "International organizations in U.S. courts: reconsidering the anachronism of absolute immunity", *31 Suffolk Transnat'l Law Review 471* (2007-2008). The International Organizations Immunities Act provides that "International organizations, their property and their assets wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as it enjoyed by foreign governments." In essence the World Bank has been declared the equivalent of a sovereign State and given diplomatic immunity. Yet, this law has been applied selectively. Lawsuits against Cuba are not only allowed but consistently won by plaintiffs.

[75] Claire Provost, "Farmers sue World Bank lending arm over alleged violence in Honduras", *The Guardian*, 8 March 2017. Available from www.theguardian.com/global-development/2017/mar/08/farmers-sue-world-bank-lending-arm-ifc-over-alleged-violence-in-honduras; Valentina Stackl, "Honduran Farmers Sue World Bank Group for Human Rights Violations", EarthRights International, 8 March 2017. Available from www.earthrights.org/media/honduran-farmers-sue-world-bank-group-human-rights-violations; the absolute immunity of heads of State has already been reduced since the arrest of General Pinochet and the indictment by the International Criminal Court of President Al Bashir. See www.ejiltalk.org/the-bashir-case-has-the-south-african-supreme-court-abolished-immunity-for-all-heads-of-states/; and Asad Kiyani, "Al-Bashir and the ICC: The Problem of Head of State Immunity", *Chinese Journal of International Law*, vol. 12, No. 3 (September 2013). Available from https://academic.oup.com/chinesejil/article/12/3/467/323940/Al-Bashir-amp-the-ICC-The-Problem-of-Head-of-State.

[76] International Monetary Fund Fiscal Affairs Department, *Manual on Fiscal Transparency* (Washington, D.C., 2007).

but in practice the institution has not used its leverage to support progress in that area. Other international financial institutions similarly fall short in that regard.[77]

66. On the other hand, IMF has taken action in the past to stop disbursements of approved loans when it discovered corruption. Thus, in 2012, when a $32 billion dollar gap in the finances of Angola was discovered, Human Rights Watch[78] urged the IMF managing director and Executive Board to continue advocacy that had already begun for transparency and accountability in the use of public funds. Human Rights Watch further urged IMF not to provide additional funds to Angola until the Fund and the public were able to verify both that the money was spent in the public interest and that there were reasons why financial oversight processes had been bypassed.

67. Special procedures mandate holders have also raised concerns about State-owned entities in Mozambique receiving loans for military purchases outside public knowledge.[79] While IMF suspended its standby funding upon discovery of such "secret lending", the Working Group on the issue of human rights and transnational corporations and other business enterprises and human rights and the Independent Expert on the effects of foreign debt on human rights further encouraged the Fund to support an established commission of inquiry investigating the misconduct and the protection of human rights defenders facing reprisals for having demanded transparency. Moreover, they cautioned that disproportionate conditions and further cuts in funds could jeopardize public spending in the fulfilment of economic, social and cultural rights obligations.[80]

68. In addition to advocacy for increased transparency among borrower Governments, Oxfam and others have highlighted that IMF could play a role in the fight against tax evasion, in particular given growing inequalities between and within States. At the end of the World Bank-IMF meeting in 2017, Oxfam released a statement indicating the following:

> We're not seeing the leadership we need from these institutions. This is a tricky time — some countries are taking steps that put the hard-fought progress we've made at risk. If the IMF and the Bank want to fight inequality and make trade work for everyone, then cooperating and tackling tax competition will be indispensable.[81]

69. In response to the Independent Expert's questionnaire, IMF implied that its influence in that area was primarily through technical assistance. Relying on a staff policy paper of 2014, entitled "Spillovers in international corporate taxation",[82] IMF concluded that limiting the adverse effects of tax avoidance and evasion on developing countries required capacity-building, addressing weaknesses in domestic law, and international arrangements. In that context, IMF promotes fiscal transparency.

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[77] Human Rights Watch, "Human Rights Watch submission re international financial institutions and human rights", 25 April 2017. Available from www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

[78] Human Rights Watch, "IMF: withhold funds to Angola: require detailed explanation of $32 billion accounting gap", 27 March 2012. Available from www.hrw.org/news/2012/03/27/imf-withhold-funds-angola.

[79] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3320.

[80] Ibid.

[81] Oxfam International, "No breakthrough on the big issues at spring meetings", 23 April 2017. Available from www.oxfam.org/en/pressroom/reactions/no-breakthrough-big-issues-spring-meetings.

[82] International Monetary Fund, "Spillovers in international corporate taxation", policy paper, 9 May 2014. Available from www.imf.org/external/np/pp/eng/2014/050914.pdf.

70. However, in follow-up to the previous report of the Independent Expert to the General Assembly on the subject (A/71/286), the Independent Expert considers that IMF could be more proactive in making tax transparency a condition, by refusing to grant loans to those countries that are tax havens. Moreover, in order to ensure that Governments can pay back their debts, it is necessary for IMF borrower countries to adopt appropriate tax legislation and enforce it, including legislation establishing a financial transactions tax.

C. Sovereign debt restructuring

71. In 2001, Anne Krueger, then Deputy Managing Director of IMF, proposed a new approach to sovereign debt restructuring. Whereas in domestic law individuals and corporations have recourse to bankruptcy codes that give them protection from their creditors, sovereign States do not. She elaborated as follows:

> We lack incentives to help countries with unsustainable debts resolve them promptly and in an orderly way. At present the only available mechanism requires the international community to bail out the private creditors ... Our aim would be to create a catalyst that will encourage debtors and creditors to come together to restructure unsustainable debts in a timely and efficient manner. This catalyst would take the form of a framework offering a debtor country legal protection from creditors that stand in the way of a necessary restructuring, in exchange for an obligation for the debtor to negotiate with its creditors in good faith and to put in place policies that would prevent a similar problem from arising in the future. The mere knowledge that such a framework was in place should encourage debtors and creditors to reach agreement of their own accord. Our model is one of a domestic bankruptcy court.[83]

72. Alas, her proposal was not endorsed by the ideology-bound IMF and the idea was essentially killed by Wall Street.[84] It is, however, still valid today.

73. The continuing work of IMF on sovereign debt restructuring[85] deserves expansion and implementation. Its report of 26 April 2013 on recent developments contained the following observation:

> While creditor participation has been adequate in recent restructurings, the current contractual, market-based approach to debt restructuring is becoming less potent in overcoming collective action problems, especially in pre-default

[83] Anne Krueger, First Deputy Managing Director, International Monetary Fund, "A new approach to sovereign debt restructuring", address given at the National Economists' Club Annual Members' Dinner, American Enterprise Institute, Washington, D.C., 26 November 2001. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/sp112601; and "Sovereign debt restructuring and dispute resolution", speech given at the Bretton Woods Committee Annual Meeting, Washington, D.C., 6 June 2002. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/sp060602.

[84] Elaine Moore, "Anne Krueger: the economist in a hurry", *Financial Times*, 7 August 2015. Available from www.ft.com/content/e3fb48a2-3bae-11e5-8613-07d16aad2152?mhq5j=e3.

[85] Juan Pablo Bohoslavsky, "Towards a multilateral legal framework for debt restructuring: six human rights benchmarks States should consider", 26 January 2015. Available from http://unctad.org/meetings/en/Presentation/gds_sd_2015-02-03-05_Bohoslavsky_en.pdf; Juan Pablo Bohoslavsky and Jernej Letnar Cernic, eds., *Making Sovereign Financing and Human Rights Work* (Hart Publishing, 2016); and Business and Human Rights Resource Centre, "Argentina: United Nations experts say the government's debt agreement with private lenders is to the detriment of peoples' human rights", 11 March 2016. Available from https://business-humanrights.org/en/argentina-un-experts-say-the-govts-debt-agreement-with-private-lenders-is-to-the-detriment-of-peoples%E2%80%99-human-rights.

cases. In response, consideration could be given to making the contractual framework more effective, including through the introduction of more robust aggregation clauses into international sovereign bonds bearing in mind the inter-creditor equity issues that such an approach may raise.[86]

74. The Independent Expert encourages IMF to mainstream the Basic Principles on Sovereign Debt Restructuring Processes, as contained in General Assembly resolution 69/319 of 10 September 2015.[87] Indeed, leaders in academia, the public sector and civil society — including Pope Francis[88] and economists Joseph Stiglitz and Thomas Piketty — have raised awareness of the need for a global bankruptcy process. The Basic Principles provide a road map for a future debt restructuring framework. Principles 1 and 8 deserve particular attention.

75. Bearing in mind that, in paragraph 2 of the resolution, the General Assembly invited all competent international organizations to support and promote the Basic Principles, IMF should join forces with other international financial institutions in facilitating debt relief programmes and removing aggressive vulture funds and hold-outs from the international financial landscape.

76. As the Independent Expert on the effects of foreign debt on human rights stated, in his remarks to the Human Rights Council Advisory Committee in 2015:

> The Guiding Principles on Business and Human Rights oblige States to ensure adequate regulation of business enterprises operating within their jurisdiction to ensure respect for human rights. In my view, this also implies the need for adequate regulation of private commercial entities in the financial sector, such as vulture funds, that may through their behaviour or activities cause negative human rights impacts, irrespectively of where such impacts take place. If vulture fund litigation in one country may impede another country to repay its restructured bond holders or trigger a debt crisis in another country, there are certainly exterritorial effects on the enjoyment of economic, social and cultural rights that need to be considered.[89]

77. In response to the Independent Expert's questionnaire, IMF responded as follows:

> Regarding an international debt restructuring mechanism, no consensus exists in the international community towards such an outcome, something also recognized by UNCTAD. In this environment, IMF reforms have focused on strengthening the existing system incrementally, by: improving debt sustainability analysis, further improving its ability to predict debt distress while ensuring it does not stand in the way of needed borrowing; reducing the risk of holdout commercial creditors through enhanced bond contract clauses; reducing the risk of official hold-out creditors through reform of the lending into official arrears policy; and providing the right framework to encourage

[86] International Monetary Fund, "Sovereign debt restructuring — recent developments and implications for the fund's legal and policy framework", 26 April 2013. Available from www.imf.org/external/np/pp/eng/2013/042613.pdf.

[87] United Nations Conference on Trade and Development, "United Nations General Assembly adopts basic principles on sovereign debt restructuring processes", 11 September 2015. Available from http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1074.

[88] Disciples Center for Public Witness, "Pope Francis calls for global bankruptcy process", 17 August 2015. Available from http://disciplescenter.blogspot.ch/2015/08/pope-francis-calls-for-global.html.

[89] Juan Pablo Bohoslavsky, Independent Expert on the effects of foreign debt on human rights, "Vulture funds and human rights", remarks at the fourteenth session of the Human Rights Council Advisory Committee, 25 February 2015. Available from www.ohchr.org/Documents/Issues/Development/IEDebt/VultureFundsAndHumanRights2014.pdf.

early debtor-creditor engagement and efficient and timely restructuring of debt when needed.

D. Interaction with the United Nations Conference on Trade and Development

78. UNCTAD *World Investment Reports* and *Trade and Development Reports* provide ample evidence that development requires the respect of the policy space of Governments, in particular in developing countries. In its response to the Independent Expert's questionnaire, IMF noted that it "interact[ed] regularly with UNCTAD on debt issues. We discuss challenges in debtor-creditor engagement, we collaborate in drafting the debt chapter in the reports of the Inter-Agency Task Force on Financing for Development — which provide an overview of debt developments and developments with the international architecture — and we both help to train country officials in dealing with debt issues." That current cooperation notwithstanding, the Independent Expert considers that there is not enough coordination between IMF and UNCTAD and would encourage an intensification of cooperation.

V. New frontiers for the International Monetary Fund?

A. An International Monetary Fund "mea culpa"?

79. In June 2016, the research department of IMF produced a paper, entitled "Neoliberalism oversold?",[90] in which it questioned the efficacy of the current guiding ideology of IMF. The paper begins with the ominous finding that: "Instead of delivering growth, some neoliberal policies have increased inequality, in turn jeopardizing durable expansion". It concludes with the following assessment:

> There are aspects of the neoliberal agenda that have not delivered as expected. Our assessment of the agenda is confined to the effects of two policies: removing restrictions on the movement of capital across a country's borders (so-called capital account liberalization); and fiscal consolidation, sometimes called "austerity", which is shorthand for policies to reduce fiscal deficits and debt levels. An assessment of these specific policies (rather than the broad neoliberal agenda) reaches three disquieting conclusions:
>
> (a) The benefits in terms of increased growth seem fairly difficult to establish when looking at a broad group of countries;
>
> (b) The costs in terms of increased inequality are prominent. Such costs epitomize the trade-off between the growth and equity effects of some aspects of the neoliberal agenda;
>
> (c) Increased inequality in turn hurts the level and sustainability of growth. Even if growth is the sole or main purpose of the neoliberal agenda, advocates of that agenda still need to pay attention to the distributional effects.[91]

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[90] Jonathan Ostry, Prakash Loungani and Davide Furceri, "Neoliberalism: oversold?", *Finance and Development*, vol. 53, No. 2 (June 2016). Available from www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm; and Rick Rowden, "The IMF confronts its N-word", Foreign Policy, 6 July 2016. Available from http://foreignpolicy.com/2016/07/06/the-imf-confronts-its-n-word-neoliberalism/.

[91] Ibid.

80. Although, in the Independent Expert's view, it does not go far enough, the analysis in the paper is praiseworthy. It reasonably suggests that economic neoliberalism has not delivered the desired results in terms of both equity and sustainability, given that, as Oxfam reported in 2017, "the wealthiest 1 per cent in the world now has as much wealth as the rest of the planet's population combined."[92]

81. Moreover, IMF recently produced a video,[93] a staff paper[94] and a promising recent study on social protection,[95] illustrating an awareness of the harms of inequality. Contrary to prior thinking, the researchers note that: "Increasing the income share of the poor and the middle class actually increases growth while a rising income share of the top 20 per cent results in lower growth — that is, when the rich get richer, benefits do not trickle down."[96]

82. These tardy "wake-up calls" should be listened to. Unfortunately, however, as the Independent Expert observed during the World Bank-IMF meeting in 2017, many in the institution still breathe the philosophy that any "growth", including that which only benefits the rich, will eventually benefit everyone, through the imaginary "trickle-down" effect, reminiscent of the objectivist ethos of Ayn Rand.[97]

B. Gross national happiness

83. Beyond re-examining the paradigm and ideology that have so far guided IMF practice, IMF should consider re-evaluating what it evaluates in terms of countries' well-being. Since 2012, the Sustainable Development Solutions Network, a United Nations innovation initiative under the auspices of the Secretary-General, has been issuing *World Happiness Reports*,[98] in which it is illustrated that human happiness is not coterminous with GDP growth, expansion of trade and material consumption. Well-being entails food security, employment, shelter, satisfaction with social services, a healthy environment, justice, equity, peace, harmony with values, traditions, culture, empathy and solidarity. In establishing the world happiness index, the Network used, inter alia, data from the World Bank on four benchmarks, namely[99] government effectiveness, regulatory quality, rule of law, and absence of

[92] Benjamin Dangl, "After empowering the 1 per cent and impoverishing millions, IMF admits neoliberalism a failure", 31 May 2016. Available from https://towardfreedom.com/archives/globalism/after-empowering-the-1-and-impoverishing-millions-imf-admits-neoliberalism-a-failure/.

[93] Available from www.imf.org/external/mmedia/view.aspx?vid=5406736503001.

[94] Era Dabla-Norris and others, "Causes and consequences of income inequality: a global perspective", staff discussion note 15/13, 15 June 2015. Available from www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/Causes-and-Consequences-of-Income-Inequality-A-Global-Perspective-42986.

[95] Independent Evaluation Office, "The IMF and Social Protection" (IMF, 2017). Available from www.ieo-imf.org/ieo/pages/CompletedEvaluation279.aspx.

[96] Ibid.

[97] Ayn Rand, *Capitalism: the Unknown Ideal* (New American Library, 1966); and Introduction to Objectivist Epistemology (New American Library, 1979).

[98] United Nations Sustainable Development Solutions Network, "World Happiness Report 2016 update ranks happiest countries", 16 March 2016. Available from http://unsdsn.org/news/2016/03/16/world-happiness-report-2016-update-ranks-happiest-countries/; and http://unsdsn.org/news/2017/03/21/media-roundup-on-2017-world-happiness-report/.

[99] John Helliwell, Richard Layard and Jeffrey Sachs, eds., *World Happiness Report 2017* (New York, Sustainable Development Solutions Network, 2017), p. 34. "The quality of a country's democratic processes was based on the average of the remaining two World Bank measures: voice and accountability, and political stability and absence of violence. The results showed that for all countries taken together, the quality of delivery mattered more for well-being than did the presence or absence of democracy."

corruption, indicators which would further enable the fulfilment of States' human rights obligations.

84. The *World Happiness Reports* also align with General Assembly resolution 65/309 of 19 July 2011, in inviting States to measure the happiness of their peoples and to use this in determining public policies. On 2 April 2012, the concept was further developed at the first high-level meeting on happiness.[100] Chaired by Prime Minister of Bhutan Jigme Thinley — Bhutan being the first country worldwide to have adopted gross national happiness as its main development indicator — the meeting referred to happiness as "a new economic paradigm".[101] Shortly thereafter, on 28 June 2012, the General Assembly, by its resolution 66/281, proclaimed March 20 the International Day of Happiness.[102] IMF could promote that goal through socially oriented conditions, advancing from the Hippocratic "do no harm" mode to the proactive development mode so as to achieve a democratic and equitable international order.

VI. Conclusions and recommendations

85. **Unlike the World Bank, which is increasingly aware of the risks and the consequences of its activities and which undertakes to investigate and take action, IMF still appears more committed to the obsolete neoliberal economic model. While the World Bank acknowledges problems and has established redress mechanisms like its Inspection Panel and its Compliance Advisor/Ombudsman, IMF is lagging behind and has been unable to correct unsustainable situations, such as the prevailing situation in Greece.**

86. **Despite its official function to safeguard global financial stability, IMF actions appear to lay bare a priority to safeguard the interests of creditors at the expense of debtors. Karin Lissakers, who served as United States representative to the IMF Executive Board for most of the 1990s, wrote in 1983 that the Fund was acting as an "enforcer of the banks' loan contracts" in Latin America, imposing harsh austerity on the debtors with the narrow objective of "free[ing] foreign exchange in order to service debts".[103]**

87. **Bearing in mind that power dynamics are changing the international order,[104] it is time for the World Bank and IMF to revisit their Articles of Agreement and discover their new vocation to promote development and human rights through "smart" lending practices that benefit not only banks and speculators, but billions of human beings. The challenge for the World Bank and IMF is to address the concerns formulated by civil society during the meeting of the institutions in 2017, including the fundamental issue of conditionality. Implementing the pertinent recommendations made by numerous special procedures mandate holders would be an initial step in the**

[100] United Nations News Centre, "Ban: new economic paradigm needed, including social and environmental progress", 2 April 2012. Available from www.un.org/apps/news/story.asp?NewsID=41685.

[101] Ibid.; see also www.un.org/esa/socdev/ageing/documents/noteonhappinessfinalclean.pdf.

[102] See www.happinessday.org/resolutions/.

[103] Karin Lissakers, "Dateline Wall Street: Faustian finance", *Foreign Policy*, No. 51 (Summer 1983), pp. 160-175.

[104] Pepe Escobar, "The G20 From Hell", 11 July 2017. Available from www.counterpunch.org/2017/07/11/the-g20-from-hell/; Kevin Zeese and Margaret Flowers, "Power Dynamics Changing In World Order", 11 July 2017. Available from www.counterpunch.org/2017/07/11/power-dynamics-changing-in-world-order/.

right direction.[105] The human rights dimension in lending can no longer be ignored.

88. International law will continue evolving for the good of mankind. At the same time, no international financial institution or commercial agreement is above international law. All must respect the overarching international human rights treaty regime.[106] In order to further elucidate the concrete application of human rights norms to international financial institutions, those institutions should request an advisory opinion from the International Court of Justice. In fact, article VIII of the Agreement between the United Nations and the International Monetary Fund explicitly authorizes IMF to request advisory opinions on any legal questions arising within the scope of its activities.

89. Civil society activism has significantly contributed to sensitizing both the World Bank and IMF about their responsibilities in the field of human rights. The many international conferences held concerning the Sustainable Development Goals and financing for development are reason for optimism. Perhaps a change of mindset is under way, one more in tune with a world populated by more than 7 billion human beings who demand food security, access to clean water and sanitation, health care and education. The shift should also be reflected in an amendment to the IMF Articles of Agreement.[107] In the *World Economic and Social Survey 2017*, the following is emphasized: "The implementation of an ambitious agenda for sustainable development requires both greater policy space for countries so that they can determine the policies that best reflect their own national context and sufficient flexibility in order to ensure an orderly recovery from situations of economic stress, as aimed for in target 17.15 under Sustainable Development Goal 17."[108]

90. As a complement to civil society activism, at the meeting of the Group of 20 held in Hamburg in July 2017, participants also demonstrated an increased awareness that inequality was no longer politically sustainable. Systematic tax avoidance by corporations and the super-rich cost poor countries an estimated $200 billion a year. Gradually, business leaders are coming to an understanding that the future of the world economy, and their own companies, depends on solving the poverty crisis, as recognized in the Sustainable Development Goals. Tackling that challenge requires that the World Bank, IMF and the business community come on board.[109]

91. Bearing in mind the legitimate interest of IMF in loan repayment, a legal and administrative environment which enables States to significantly increase

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[105] See www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

[106] See www.imf.org/external/np/sec/memdir/memdate.htm. More than 90 per cent of the 189 countries that are members of the World Bank and International Monetary Fund have ratified four or more international human rights treaties. Human rights are also protected to varying degrees in most countries' constitutions or legislation. All but 1 have ratified the Convention on the Rights of the Child; 189 have ratified the Convention on the Elimination of All Forms of Discrimination against Women; 178 have ratified the International Convention on the Elimination of All Forms of Racial Discrimination; 169 have ratified the International Covenant on Civil and Political Rights; 165 have ratified the International Covenant on Economic, Social and Cultural Rights.

[107] International Monetary Fund, *Articles of Agreement* (Washington, D.C., 2016). Available from www.imf.org/external/pubs/ft/aa/.

[108] *World Economic and Social Survey 2017* (United Nations publication, Sales No. E.17.II.C.1). Available from www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESS_2017-FullReport.pdf.

[109] "The G20 and the Inequality Crisis", 7 July 2017. Available from www.project-syndicate.org/print/g20-solutions-to-ending-inequality-by-helle-thorning-schmidt-2017-07.

their tax revenue, prevent waste and corruption and, if they occur, subject malfeasances to civil and penal sanctions, must be put into place. Domestic resource mobilization, mainly tax income, is essential to sustainable development. It is also necessary to make maximum resources available for the realization of rights (see A/71/304, para. 30). Thus far, however, international financial institutions and States have failed to enact the institutional reforms needed to make it happen. The Group of 77, which represents developing countries and thus the majority of Member States, has repeatedly asked for an intergovernmental tax body to be established under the auspices of the United Nations,[110] a proposal that the Independent Expert echoed in his previous report to the General Assembly, submitted in 2016 (A/71/286).

92. **As in all human endeavours, there are priorities to be set and choices to be made. The Independent Expert is of the opinion that IMF should change its priorities and finally let go of the outdated conditions of privatization, deregulation of markets, and "austerity" in social services, which in the past have engendered human rights violations.**

93. **Henceforth, IMF should make loans subject to a new set of conditions, including:**

(a) **A moratorium on military expenditure (except for salaries and pensions) for the duration of the loan;**

(b) **Adoption of national legislation that ensures that national and transnational corporations pay their taxes, prohibits profit-shifting, and outlaws tax havens;**

(c) **Adoption of General Anti-Avoidance Rule legislation to address specific base erosion and profit shifting concerns;**[111]

(d) **Adoption of legislation imposing fines on persons and corporations which evade taxes and obliging citizens who have moneys hidden offshore to repatriate their wealth within a defined period of time, or otherwise face the risk of penal sanctions;**

(e) **Adoption of legislation to prevent corruption and bribes, accompanied by effective monitoring mechanisms;**

(f) **Enactment of financial transactions tax laws;**

(g) **Assurances by the borrower that no part of any loan is used to satisfy claims by vulture funds or hold-outs.**

94. **Furthermore, IMF should:**

(a) **Engage with and strengthen ongoing initiatives on international tax cooperation such as the automatic exchange of information and the base erosion and profit shifting initiatives and the Platform for Collaboration on Tax, as indicated in the *Global Policy Agenda* of April 2017;**

(b) **Assist jurisdictions in developing capacities to tackle illicit financial flows;**

(c) **Strengthen the global financial safety net with an adequately resourced, quota-based IMF at its centre;**

[110] See www.un.org/esa/ffd/ffdforum/wp-content/uploads/sites/3/2017/04/2ndInformal_Statement-by-G77.pdf.

[111] Ernesto Crivelli, Ruud De Mooij and Michael Keen, "Base erosion, profit shifting and developing countries", working paper No. 15/118 (International Monetary Fund, 2015).

(d) Increase coordination and cooperation with regional financial arrangements;

(e) Support public investments in energy-efficient infrastructure and climate change mitigation projects;

(f) Contribute to public investments in education, the care economy, water and sanitation, as well as other quality public services;

(g) Support sustainable pension systems as promised in the *Global Policy Agenda* of April 2017;

(h) Provide advisory services and technical assistance to States, including in drafting tax legislation and general anti-avoidance rules;

(i) Guarantee that, in cases of negative human rights impacts, victims have effective recourse and receive compensation, livelihood assistance and/or resettlement.

95. **Implementing these recommendations will benefit the entire human family. Indeed, as in the motto of Centre Europe-tiers monde: "There is not a developed world and an underdeveloped world but a single world badly developed." Only through the concerted efforts of IMF and the World Bank, together with the United Nations, will a more democratic and equitable international order emerge.**